IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 23rd November, 2007

+ L.A. APP. No.651/2005

HARNAM DAS FAMILY TRUST ..... Appellant
! Through: Mr.J.V. Rana, Advocate.

versus

$ UNION OF INDIA & ORS. ..... Respondent
^ Through: Mr.Sanjay Poddar, Advocate for LAC.
Mr.Amiet Andlay, Advocate for respondent No.2.

+ L.A. APP. No.652-53/2005

PARVEEN GUPTA & ANR. ..... Appellant
! Through: Mr.J.V. Rana, Advocate.

versus

$ UNION OF INDIA & ORS. ..... Respondent
^ Through: Mr.Sanjay Poddar, Advocate for LAC.
Mr.Amiet Andlay, Advocate for respondent No.2.

+ L.A. APP. No.686/2005

AMARJIT SINGH RANDHAWA ..... Appellant
! Through: Mr.J.V. Rana, Advocate.

versus

$ UNION OF INDIA & ORS. ..... Respondent
^ Through: Mr.Sanjay Poddar, Advocate for LAC.

Mr.Amiet Andlay, Advocate for respondent No.2.

\+ L.A. APP. No.687/2005

\# UJJWAL SINGH ..... Appellant
! Through: Mr.J.V. Rana, Advocate.

versus

$ UNION OF INDIA & ORS. ..... Respondent
^ Through: Mr.Sanjay Poddar, Advocate for LAC.
Mr.Amiet Andlay, Advocate for respondent No.2.

\+ L.A. APP. No.688/2005

\# ABHAY RAM DAHIYA ..... Appellant
! Through: Mr.J.V. Rana, Advocate.

versus

$ UNION OF INDIA & ORS. ..... Respondent
^ Through: Mr.Sanjay Poddar, Advocate for LAC.
Mr.Amiet Andlay, Advocate for respondent No.2.

CORAM:
* **HON'BLE MR.JUSTICE T.S.THAKUR**
* **HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

T.S.THAKUR, J. (ORAL)

These appeals arise out of orders passed by the Additional District Judge, Delhi in five different but connected references under Section 18 of the Land Acquisition Act. Since common

questions of fact and law arise for consideration, the appeals were heard together and shall stand disposed of by this common order.

2. Different parcels of land belonging to appellants-land owners in different khasra numbers of village Holambi Khurd, Delhi were acquired by the Collector Land Acquisition for public purposes of shifting of industrial units from the city of Delhi. Award No.4/98-99 determined the compensation payable to the land owners in respect of the land acquired from their ownership while a supplementary award No.4A/98-99 determined the compensation payable to them on account of superstructures standing on the said land. Dissatisfied with the amount of compensation held payable to them, the owners sought references under Section 18 of the Land Acquisition Act to the civil court for determination of just and fair compensation payable for the property acquired from their possession. The reference court framed one common issue in all the references to the following effect:

> "1. To what enhancement in compensation is the petitioner entitled? If so, to what amount?"
>
> 2. Relief."

3. In support of their claim for enhancement, the owners examined PW-1 Rohit Khurana, PW-2 Rajender Ram and PW-3

Anil Kumar Sharma apart from certain documents which were marked in the course of their depositions. Upon appreciation of the evidence assembled at the trial, the reference court came to the conclusion that there was no justification for directing any enhancement in the amount of compensation payable to the land owners for the land acquired from their ownership. Even in regard to the superstructures standing on the land that was acquired, the reference court accepted the determination of the amount by the Land Acquisition Collector and came to the conclusion that the said amount was just and proper, on the basis of a report prepared by the Public Works Department as to the value of the said structures. On those findings the reference court turned down the claim for enhancement made by the owners before it. The owners, it appears, had also made a claim for payment of solatium on the amount of compensation determined towards the value of the superstructures standing on the land. That claim too was examined by the reference court and rejected relying upon the decision of the Supreme Court in *Ratan Kumar Tandon & Ors. v. State of U.P.* (1997) 2 SCC 161. The references were on those findings rejected in toto. The present appeals as already noticed, call in question the correctness of the said orders passed by the reference court.

4. Appearing for the appellants Mr.J.V. Rana submitted that the appellants were not assailing the view taken by the reference court insofar as the claim for enhancement of compensation payable for the land and the superstructures were concerned. He urged the amounts determined by the Land Acquisition Collector both in regard to the land as also the superstructures standing on the same could be taken as having been properly determined. However, the appellants were according to Mr.Rana entitled to recover further amount from the respondents on account of statutory benefits like solatium on the amount of compensation determined for the superstructures and the additional compensation in terms of Section 23(1A) together with interest on the said amounts under Section 34 from the date the possession of the property was taken over till the date of actual payment. He urged that the learned reference court fell in error in rejecting the claim made by the appellants for payment of solatium and statutory benefits and that the decision in Ratan Kumar Tandon's case relied upon by the court below had no application whatsoever to the facts and situation in the case in hand. He further submitted that while determining the additional amount of compensation under Section 23(1A) of the Act, the period during which earlier writ

petitions filed by the owners challenging their threatened dispossession from the land in question without compliance with the provisions of Section 17 of the Act remained pending could not be excluded having regard to the fact that the proceedings for the acquisition of the land had not been held up on account of the said direction. He drew our attention to different interim orders passed by this court in the said petitions some of which were to the following effect:

> "Counsel for respondent No.3 submits that in the facts of the present case the DSIDC is a necessary party. Counsel for petitioner has no objection to the DSIDC being impleaded as a respondent. Accordingly, DSIDC is impleaded as respondent No.6 in this petition. Amended memo of parties be filed within a week. Let notice of this petition issue to the DSIDC, Bombay Life Building, N Block, Connaught Place, New Delhi for 13th February, 1998. Petitioner will take steps to serve the notice on DSIDC for the next date.
>
> Counsel for respondents request for time to file reply. Let the same be filed within four weeks. Rejoinder, if any, be filed before the next date. In the meanwhile the respondents will not dispossess the petitioner except after complying with provisions of section 17 of the Land Acquisition Act.
>
> Copies of the order be given dasti to counsel for the parties."

5. Mr. Rana urged that since the directions issued by this court were meant to enforce compliance with Section 17 of the Act, there was no real impediment in the progress of the

acquisition proceedings within the meaning of the explanation to Section 23(1A) of the Land Acquisition Act so as to justify exclusion of the period during which the said order remained in force for purposes of grant of benefit under the said provision.

6. We find considerable merits in both the submissions made by Mr.Rana. In the light of the statement made by Mr.Rana that the appellants are satisfied with the amount of compensation determined towards the land and the superstructures, we are not called upon to examine the correctness of the order passed by the learned reference court in that regard. The only question that remains to be examined is whether the appellants were entitled to claim statutory benefits like additional compensation, solatium and interest in terms of Section 23(1A) and 23(2) and Section 34 of the Land Acquisition Act. The reference court while declining to award solatium on the amount of compensation determined for the superstructures relied upon the decision of the Supreme Court in Ratan Tandon's case, supra. That decision does not, however, lays down any proposition like the one which the court below has read in the same. All that the Supreme Court has observed in Ratan Kumar Tandon's case is that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of

the building and the land. They are entitled to compensation on either of the two methods but not both. The court was in that case dealing with a situation where the land had been separately valued and, therefore, the building could not be valued again or separately assessed for purposes of compensation except to the extent of value of the debris. That is precisely the position in the instant case also. It is not disputed that award No.4/98-99 had assessed the entire land acquired from the ownership of the appellants including that lying under the superstructures. The supplementary award thereafter made by the Collector assessed the superstructures or debris without assessing the land underlying the building again. There was, therefore, no flaw in the process of assessment made by the Collector. The Supreme Court was not, it is obvious from a plain reading of the decision in Ratan Kumar Tandon's case, dealing with the question whether the owner would be entitled to solatium and additional compensation in terms of Section 23(1A) of the Act even qua the value of the debris. The reference court, therefore, fell in error in rejecting the claim for payment of solatium as also the additional compensation under Section 23(1A) merely because the compensation in question related to the debris and not land as

understood in common parlance. By doing so, the reference court overlooked the definition of the term 'land' as given in Section 3(a) of the Act. That expression is defined as under:

> "3(a)- the expression "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth"

7. It is not in dispute that even when the superstructure may be valued as debris the same was permanently attached to earth. For purposes of valuation it can be treated as debris but the fact remains that when the compensation for the entire property is assessed the value of the land would represent the true value of the property only if the value of the debris standing on the same is also included. In that sense, therefore, it was the sum total of the value of the land as also the debris standing on the same which would constitute the compensation payable to the land owners. If that be so as indeed, it is in our opinion, the owners would be entitled to statutory benefits of additional compensation payable in terms of Section 23(1A) of the Act and solatium in terms of Section 23(2) on the value of debris also. Inasmuch as Collector as also the reference court declined payment of those benefits and interest on the same to the owners they committed a mistake which needs to be corrected in appeal.

8. That brings us to the question whether the proceedings in the connected writ petitions had held up, the acquisition proceedings within the meaning of explanation to Section 23(1A) so as to justify exclusion of the period for purposes of calculation of benefit under Section 23(1A) of the Act. Learned counsel for the appellants argued that the writ petitions filed by the appellants simply intended to enforce the provisions of Section 17(3A) of the Land Acquisition Act which envisaged payment of 80% of amount before taking over the possession of the land in question. He drew our attention to some orders passed in those proceedings from a reading whereof it does appear that the court had simply insisted upon compliance with the requirements of Section 17 before the owners are dispossessed. Mr.Poddar, learned counsel for the respondent, however, pointed out an order passed on 3rd September, 1997 in W.P. (C) No.2697/1997 where the stay of dispossession is unconditional. It was argued by Mr.Poddar that the language of the orders issued by this Court in the writ petitions filed by the appellants were different and, therefore, each case will have to be seen in the context of the order that was passed.

9. We do not consider it necessary to examine in detail the submissions made at the Bar insofar as the question of exclusion

of the period from reckoning for purposes of Section 23(1A) is concerned. We say so because the orders passed by the writ court shall have to be interpreted which process cannot be undertaken by us without the complete writ records before us. That apart the question whether any period requires to be excluded in terms of the explanation, may more logically arise for consideration before the executing court. All that we need say is that the appellants would be entitled to the benefit of Section 23(1A) subject to the explanation to the said provision. Appellants will also be entitled for the benefit of the statutory interest payable under Section 34 of the Act at the rate of 9% for the first year and 15% for the subsequent period beyond one year from the date of possession, not only in relation to the compensation determined for the land but also for the amount of compensation payable for the superstructure and the solatium and additional compensation in terms of the decision of the Supreme Court in *Sunder v. Union of India* 93 (2001) DLT 569.

10. In the result, we allow these appeals but only in part and to the limited extent that the appellants shall be entitled to additional compensation in terms of Section 23(1A) and solatium in terms of Section 23(2) as also interest on the said amounts both in relation to the compensation determined for the land

and that held payable for the superstructures. The decrees/awards made by the reference court shall to that extent stand modified. Parties are left to bear their own costs.

T.S.THAKUR, J

VEENA BIRBAL, J

November 23, 2007
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